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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/650,416	08/29/2003	David Edwin Zapp	DEZ 001 P2	6570

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EXAMINER

PRICE, CARL D

ART UNIT	PAPER NUMBER
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3749

MAIL DATE	DELIVERY MODE
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07/13/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/650,416

Applicant(s)

ZAPP, DAVID EDWIN

Examiner

CARL D. PRICE

Art Unit

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04/13/2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 16-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13, 16, 17 and 19 is/are rejected.
- 7) ☒ Claim(s) 4, 14 and 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims **1-14** and **16-18** have been considered but are moot in view of the new ground(s) of rejection.

Applicant has amended the claims to be of a scope not previously considered, at least by replacing the term “cone” with “an updraft facilitation means”.

Applicant argues that the prior art relied on in the previous office action fail to show, disclose and/or teach certain aspects of applicant's invention now recited in the claims filed on **04/13/2007**.

The following examiner's action is now presented in response to applicant's arguments and to address the scope of the amended claims.

The previous indicated allowability of claim **8** is withdrawn in view of the newly discovered reference(s) to **US004338915 (Martonfi)** in combination with the teachings of **US005197455 (Tessien)**, **US003216379 (Durfee)** or **US003934520 (Brennen et al)** (all of record), now relied on to address the a scope of the amended claims now being considered. Rejections based on the newly cited reference(s) follow.

Claim Objections

Claim **4** is objected to because of the following informalities: The term “adjusted” should be “adjustable” in order to convey the presence in the claim of actual structure permitting the planar members to be “adjusted”. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims **1-11** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim **1** recites the limitation "the cone" in line 16. There is insufficient antecedent basis for this limitation in the claim. For the purpose of examination "the cone" is understood as the "updraft facilitation means", which replaces the previously recited "cone".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims rejected under 35 U.S.C. 102(b)

Claims **1, 2, 3, 7, 9, 10, 12, 13, 16** and **19** re rejected under 35 U.S.C. 102(b) as being anticipated by **US004338915 (Martonfi)**.

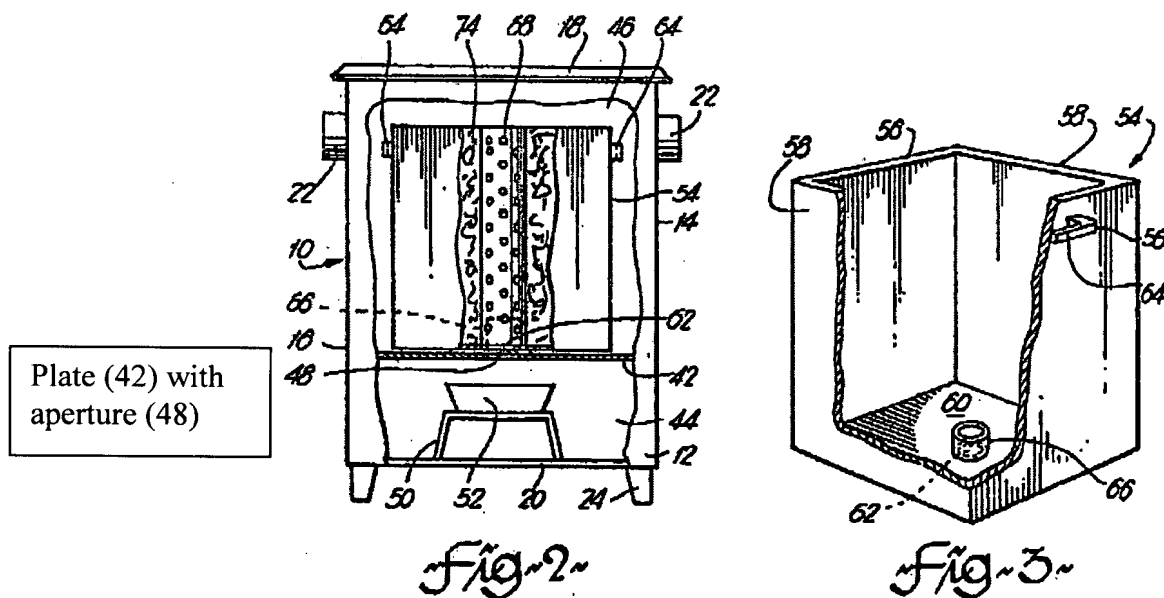
In regard to claims **1, 3, 12, 13, 16** and **19**, **US004338915 (Martonfi)** shows and discloses a charcoal fire starter including:

- a first chamber (10) having:
 - a sidewall (12, 14, 16, etc.);
 - a top edge (not referenced; contacting the top wall 18);
 - a bottom surface (20); and
 - a planar member (42, a grate (note shown; Note: "Open 50 can be replaced by a small grate (not shown) if the secondary combustion material is to be wood shavings, twigs, paper or the like.") disposed horizontally intermediate the top edge (at 18) and the bottom surface (20);
 - the planar member having at least one aperture (48) extending from a top surface to a bottom surface;

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- only one sidewall (12) having an aperture (34) formed therein intermediate the bottom surface (90) and the planar member (28); and
- a second chamber (54; figure 3) disposed above (figure 2), supported on and in cooperating relationship with the first chamber planar member (42) and having:
 - a sidewall (56, 58);
 - a top edge (not referenced); and
 - a planar charcoal supporting bottom surface (60) extending across the second chamber; and
 - the second chamber having one aperture (62, 66) formed therein; and
 - updraft facilitation means (68) atop and in contacting relationship to the second chamber charcoal supporting bottom surface, wherein the updraft facilitation means and spaced in totality inwardly of the second chamber sidewall, and having a sidewall with a plurality of apertures (70) extending therethrough.

US004338915 (Martonfi) shows:



S004338915 (Martonfi) discloses:

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“(9) In operation, the container 54 is first of all charged with primary combustible material, (74 in FIG. 2) externally of the stove, and with the flame propagating tube 68 in position on flange 66. While any type of combustible material may be used, such as wood, coal, charcoal briquettes and the like the preferred material is a compressed mixture of sawdust, coal dust and other small pieces of combustible material such as wood chips or coal pieces. Such a mixture could be prepared at home at very little expense and has the advantage of providing little or no passage therethrough for flame or air whereby a slow rate of combustion, combined with high heat output is achieved.

(10) The charged container is then positioned in the upper chamber 46 of the stove through the opening defined by the open door 28 and it is positioned on the plate 42 with the opening 62 in registry with the aperture 48 as shown in FIG. 2. Since the tube 68 is already within the charged container an air space exists therein which is in communication via the opening 62 and the aperture 48 with the lower chamber 44. The door 28 is then closed and the sliding plate 40 is placed in the closed position.

(11) A starting fire is then set in the lower chamber 44 as by lighting starting fluid with the pan 50 or by setting a small fire on a grate within the lower chamber. Door 26 is then closed and combustion of the secondary material in the lower chamber is controlled by the vent 34.

(12) As the starting fire burns, the flames produced thereby will be drawn up into the flame propagating tube 68 by the draft created in the stove. The flames of the starting fire will ignite the primary combustible material within the container via the holes 70 and combustion of the primary material will continue radially outwardly of the tube 68 after the starting fire has died out. ...”

In regard to claim 2, the first chamber sidewall of US004338915 (Martonfi) has retention means (“welds”) for support thereon of the planar member.

US004338915 (Martonfi) discloses:

“Plate 42 is provided with a central aperture 48 therethrough of relatively small diameter in relation to the area of the plate. With the exception of aperture 48, the plate completely fills the horizontal area of the stove interior. It may be welded to the stove walls or it may be provided with feet (not shown) which support it at the desired distance above the upper surface of the bottom wall 20.”

In regard to claim 7, the second chamber of US004338915 (Martonfi) a handle (64).

In regard to claim 9, the first chamber planar member US004338915 (Martonfi) is removable, (i.e. —“ it may be provided with feet (not shown) which support it at the desired distance above the upper surface of the bottom wall 20.”)

In regard to claim 10, the first chamber sidewall US004338915 (Martonfi) has apertures formed only on one side (12) of the first chamber.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims rejected under 35 U.S.C. 103(a)

Claims 1-3, 5-7 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over US003915144 (Tomita) in view of US005197455 (Tessien), US003216379 (Durfee) or US003934520 (Brennen et al).

US003915144 (Tomita) shows and discloses a charcoal fire starter including:

- a first chamber (20; 80; 130) having:
 - o a sidewall;
 - o a top edge (not referenced; contacting "Lower end 16"), and
 - o a bottom surface (90; see for example figure 8); and
 - o a planar "grate" member (28, or 138) disposed horizontally intermediate the top edge (at 16) and the bottom surface (90);
 - o the planar "grate" member having at least one aperture extending from a top surface to a bottom surface (see for example planar "grate 106" (figure 5));
 - o the sidewall (20) having at least one aperture (38) formed therein intermediate the bottom surface (90) and the planar member (28), and
- a second chamber (2,12; 52,72; 100,70; 112,122) disposed above and in cooperating relationship with the first chamber (20; 80; 130) and having:
 - o a sidewall;
 - o a top edge (4); and
 - o a planar charcoal supporting bottom surface (i.e. – grate 6, or 106) extending across the second chamber and located above the first chamber planar member; and
 - o the second chamber having at least one aperture formed therein (i.e.- the apertures necessarily present in the planar bottom surface grate 6, or 106).

U.S. Patent Oct. 28, 1975 Sheet 1 of 4 3,915,144

FIG. 1

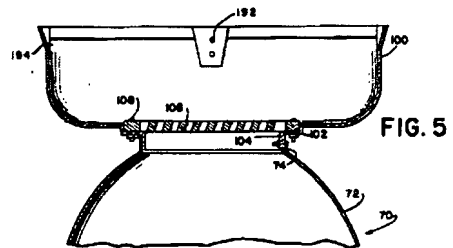
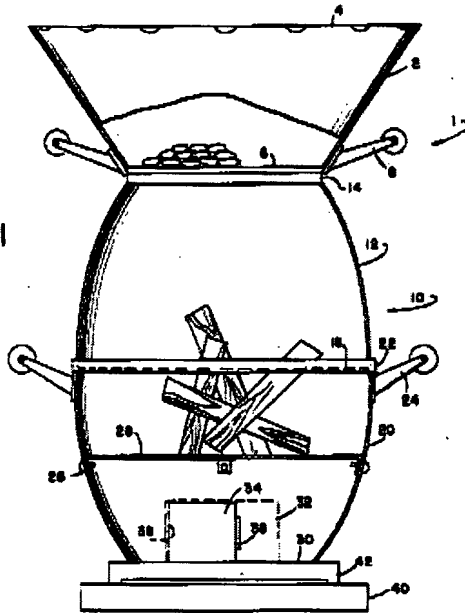


FIG. 5

FIG. 8

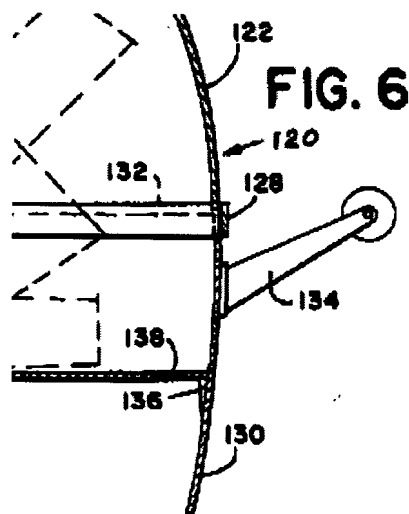
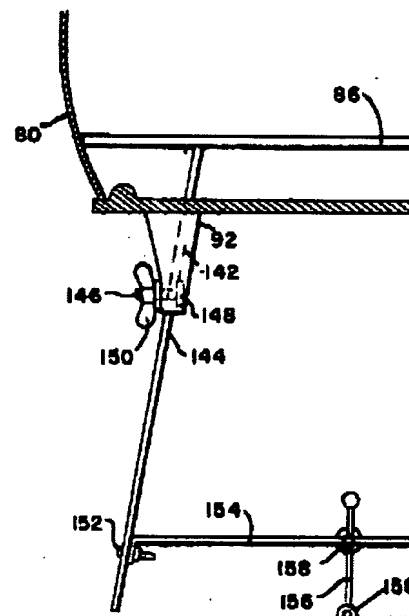


FIG. 6

US003915144 (Tomita) shows and discloses the invention substantially as set forth in the claims with possible exception to:

- the second, or upper most, chamber having an updraft facilitation means atop and in contacting relationship to the second chamber charcoal supporting bottom surface, wherein the updraft facilitation means and spaced in totality inwardly of the second chamber sidewall, and having a sidewall with a plurality of apertures extending therethrough.

US005197455 (Tessien) teaches, from applicant's same charcoal ignition field of endeavor, placing a charcoal ignition draft facilitating means (11, 12) within a cooking grill for aiding in the initial ignition of the charcoal.

U.S. Patent

Mar. 30, 1993

Sheet 2 of 5

5,197,455

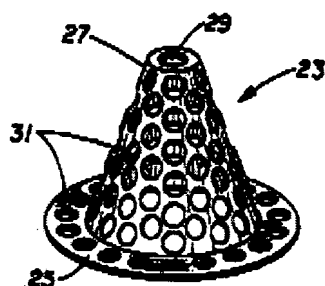


FIG. 3

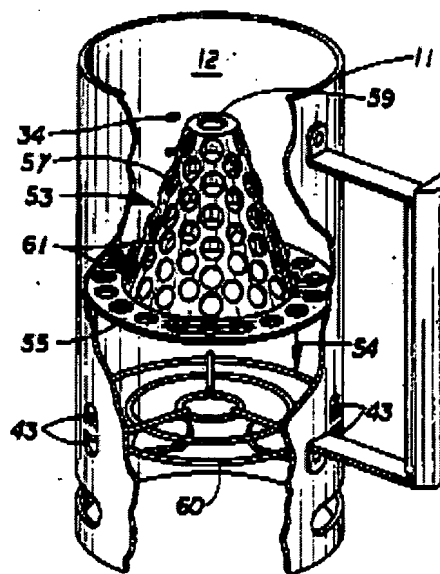
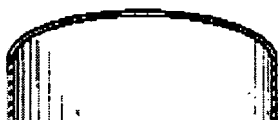


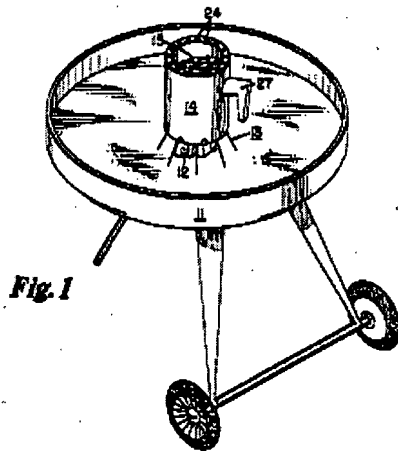
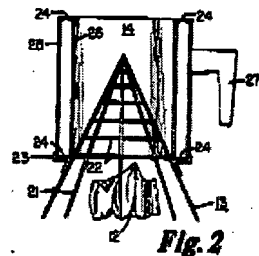
FIG. 4

US003216379 (Durfee) teaches, from applicant's same charcoal ignition field of endeavor, placing a charcoal ignition draft facilitating means (14) having a plurality of support legs, within and supported on a cooking grill (11), for aiding in the initial ignition of the charcoal.

Nov. 9, 1965

A. N. DURFEE
CHARCOAL IGNITER
Filed July 22, 1963

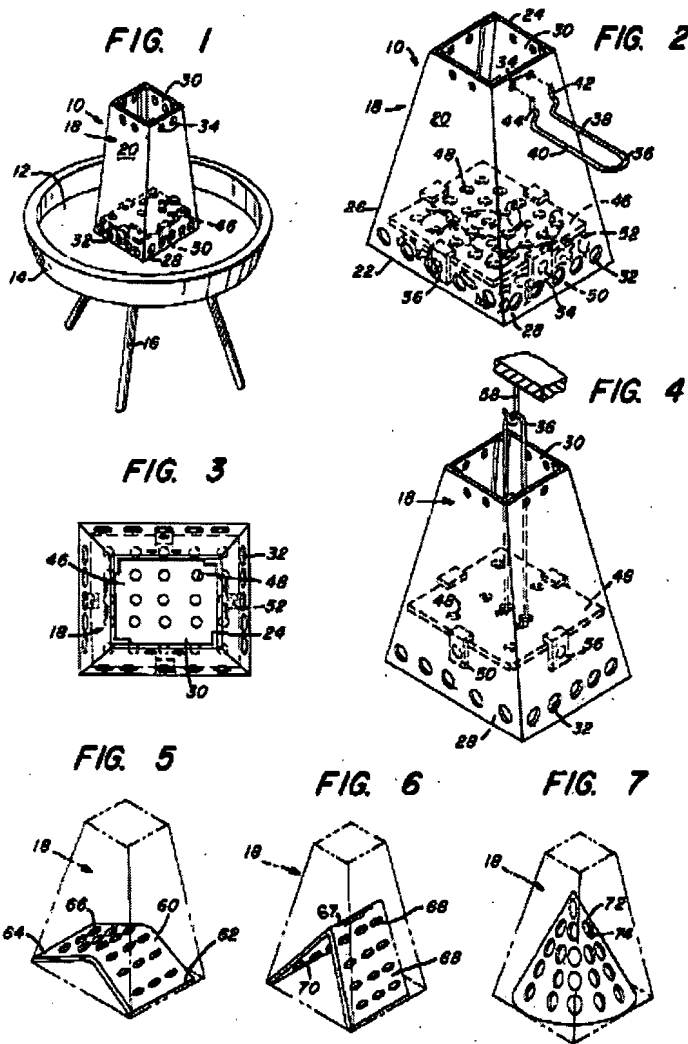
3,216,379



US003934520 (Brennen et al) teaches, from applicant's same charcoal ignition field of endeavor, placing a charcoal ignition draft facilitating means (10) having a plurality of support legs (21), within and supported on a cooking grill (12, 14), for aiding in the initial ignition of the charcoal.

U.S. Patent Jan. 27, 1976

3,934,520



In regard to claim 1-3, 5-7, 9-12, for the purpose of providing means to further aide in ignition of the charcoal when supported on the second chamber grate (6, or 106), it would have been obvious to a person having ordinary skill in the art to provide US003915144 (Tomita) with a draft facilitating means of the type specified in applicant's claim, in view of the teaching of US005197455 (Tessien), US003216379 (Durfee) or US003934520 (Brennen et al).

In regard to claim 2, the first chamber sidewall of **US003915144 (Tomita)** has retention means (26) for support thereon of the planar member.

In regard to claim 3, it is noted that the first chamber planar member (28) of **US003915144 (Tomita)** is a "grate" which necessarily includes apertures throughout its planar extent (for an example of a planar "grate" see element 106 of figure 5). Therefore any one of these grate openings, or apertures, located centrally of the grate meets the claim limitation that the "planar member has formed therein a centrally positioned aperture".

In regard to claim 5, the second chamber of **US003915144 (Tomita)** has a **flange member**, the flange member (22, or 128; see figure 6) forming the bottom edge of the second chamber sidewall, the flange member telescoping with the top edge (16, or 132) of the first chamber.

In regard to claim 6, the second chamber of **US003915144 (Tomita)** has a removable grating (not shown; "a food holding grill") placed atop the top edge (4) of the second chamber.

In regard to claim 7, the second chamber of **US003915144 (Tomita)** has a handle (8).

In regard to claim 9, the first chamber planar member **US003915144 (Tomita)** is removable.

In regard to claim 10, the first chamber sidewall **US003915144 (Tomita)** has apertures formed only on, or to, one side of the first chamber.

In regard to claim 11, since the shape of the chambers would necessarily depend on numerous and interrelated design considerations and concerns such as the overall shape and size of the device, the relative sizes of the various wall apertures, etc., to form the chamber to be cylindrical can be viewed as nothing more than merely a matter of choice in design, absent eh

showing of any new or unexpected results produced therefrom over the prior art of record (note for example the cylindrical chambers 10b, 12b of US003841299 (Tomita)).

Claims rejected under 35 U.S.C. 103(a)

Claims 8 and 17 rejected under 35 U.S.C. 103(a) as being unpatentable over US004338915 (Martonfi) in view of US005197455 (Tessien), US003216379 (Durfee) or US003934520 (Brennen et al).

US004338915 (Martonfi) shows and discloses the invention substantially as set forth in the claims with possible exception to the second chamber having support legs. See the discussion of US004338915 (Martonfi) herein above.

US005197455 (Tessien), US003216379 (Durfee) and US003934520 (Brennen et al) each teach, form applicant's same charcoal ignition field of endeavor, placing a charcoal ignition draft facilitating means (11, 12) within a cooking grill for aiding in the initial ignition of the charcoal. And, each further teach providing legs or raised support means for maintaining the fuel supporting bottom of the charcoal chamber above a surface on which it may be placed, to provide introduction of air from below the chamber.

In regard to claim 8, for the purpose of providing additional air flow about the lower or bottom surface of the second chamber, it would have been obvious to a person having ordinary skill in the art to modify the second chamber of US004338915 (Martonfi) to include a plurality of support legs, in view of the teaching of US005197455 (Tessien), US003216379 (Durfee) or US003934520 (Brennen et al). In this regard, note that the wall portions formed between the air openings in the lower skirt area of US005197455 (Tessien) and US003934520 (Brennen et al) are deemed the structural and functional equivalent to applicant's broadly claimed "plurality of supporting members extending downwardly from said second chamber bottom surface". Notwithstanding the legs arrangements taught by US005197455 (Tessien), US003216379 (Durfee) or US003934520 (Brennen et al), since the actual shape and arrangement of legs

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providing a raised area between such chambers and any surface on which they are supported would necessarily depend on numerous design concerns such as the overall size, weight and shape of the chamber, etc., to form the legs, or raised support, in the manner set forth in applicant's claims can be viewed as nothing more than merely a matter of choice in design absent the showing of any new or unexpected results produced therefrom over the prior art of record.

In regard to claim 17, since the shape of the chambers would necessarily depend on numerous and interrelated design considerations and concerns such as the overall shape and size of the device, the relative sizes of the various wall apertures, etc., to form the chamber to be cylindrical can be viewed as nothing more than merely a matter of choice in design, absent the showing of any new or unexpected results produced therefrom over the prior art of record (note for example the cylindrical chambers 10b, 12b of US003841299 (Tomita)).

Allowable Subject Matter

Claim 4 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Claims 14 and 18 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

See the attached USPTO for, 892 for prior art made of record and not relied upon which is considered pertinent to applicant's disclosure.

THIS ACTION IS MADE FINAL.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

USPTO CUSTOMER CONTACT INFORMATION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARL D. PRICE whose telephone number is (571) 272-4880. The examiner can normally be reached on Monday through Friday between 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven B. McAllister can be reached on (571) 272-6785. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


CARL D. PRICE

Primary Examiner

Art Unit 3749

CP